IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 17441 of 2003

Between:

Gangireddy Venkata Lakshmamma, W/o Venkata Reddy
Devarapalem Gram Panchayat., R/o Obachettapalem.,
Cheemakurthi Mandal., Prakasam District.

..... PETITIONER

AND

1 Gangireddy Kotamma, W/o Venkata Reddy
R/o Bakkireddypalem, H/o Devarapalem, Cheemakurthi Mandal.,
Prakasam District.
2 The District Election Authority cum District Collector.,
Prakasam District at Ongole.
3 The Additional Election Authority - MDO S.Radha Mohan Rao.,

Mandal Parishad, Cheemakurti, Prakasam District.
4 The Election Officer, Devarapalem Gram Panchayat.,

B.Subrahmanyam, MCRDO.,Cheemakurthi, Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction particularly one in the nature of Writ of Certiorari by calling for the records relating to the order passed in OP No.27 of 2001, dated 14-8-2003 on the file of Election Tribunal/ Principal Junior Civil Judge, Ongole and set aside the same as it is illegal and contrary to the provisions of APPR Act, 1994 and the Rules made thereunder.

Counsel for the Petitioner:MR.T.NAGARJUNA REDDY

Counsel for the Respondent No.1. MR.K.R. PRABHAKAR

Counsel for the Respondent Nos.2 to 4: GP FOR PANCHAYAT RAJ

The Court made the following :

ORDER:

The elections to the Office of Sarpanch of Devarapalem Gram Panchayat were held on 4.12.2001. The petitioner herein was duly elected. First respondent herein filed O.P.No.27 of 2001 under Section 233 of A.P.Panchayat Raj Act, 1994 (for short, the Act) read with Rule 2(2)(i)(a) of the A.P.Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short, the Election Tribunal Rules). The learned Election Tribunal and Court of the Principal Junior Civil Judge, Ongole, by order dt.14.7.2003 set aside the election of the petitioner and declared the first respondent as elected Sarpanch of the said Gram Panchayat. In these Certiorari proceedings, the order of the learned Election Tribunal in O.P.No.27 of 2001 is challenged.

First respondent challenged the election of the petitioner on various grounds, including the ground that the recounting done by fourth respondent was contrary to Rule 35 of the A.P.Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 (for short, the Election Rules). The election of the petitioner was also challenged on the ground that polling of dead votes in favour of petitioner is illegal, petitioner purchased 150 votes at the rate of Rs.500/- to Rs.1,000/- per vote and resorted to corrupt practice and that missing of two votes polled in favour of petitioner vitiated the election. The petitioner herein opposed the election petition by filing a detailed counter affidavit. The Election Tribunal tried the matter and examined P.Ws.1 to 9 for the first respondent and R.Ws.1 to 4 for the petitioner, besides marking Exs.A.1 to A.11 and Exs.X.1 to X.10. After the trial, the first respondent, however, gave up all the grounds and relied on only one ground, namely, recounting ordered by fourth respondent herein, who was examined as R.W.4, is illegal being contrary to Rule 35 of the Election Rules.

The learned Tribunal framed three points for consideration. On the first point, whether first respondent has made out case for recounting of the polled votes, the Tribunal held against first respondent. Insofar as second point is concerned, the

Tribunal considered the validity of the election in the light of Rule 35 of the Election Rules and came to the conclusion that fourth respondent conducted recounting illegally without passing any reasoned order and therefore the election of the petitioner is vitiated. On the third point the learned Tribunal held that first respondent is elected Sarpanch of Devarapalem Gram Panchayat.

Sri T.Nagarjuna Reddy, learned counsel for the petitioner submits that in the absence of any pleading that recounting undertaken by fourth respondent is illegal, the election petition ought not to have been allowed. He would also submit that the decision of the Division Bench of this Court in **Shaik Khasim Bee v. Principal Magistrate (Election Tribunal)** on which the Tribunal placed reliance, has no application to the facts of this case.

After completion of the polling on 4.12.2001, it was found that first respondent secured 987 votes and the petitioner got 985 votes. On allegation that petitioner made request, fourth respondent ordered for recounting when it was found that first respondent got 986 votes and petitioner got 987 votes with seventeen invalid votes. In O.P.No.27 of 2001, first respondent in Paragraph –III(I), it was clearly stated as under:

During the 1st counting it was announced that 987 votes are secured by the petitioner (Auto Rikshaw) and 985 votes are secured by the 1st respondent (Caram Board.) But after re-counting it was announced that the petitioner secured 986 votes and the 1st respondent secured 987 votes and 17 votes were declared invalid. While completing the 1st time counting, while allowing recounting and while declaring the result, the Election Officer did not follow the rules and everything was done very secretly and hurriedly without notice to the petitioner or her counting agents, and entire process was closed without taking the signatures of the counting agents of the petitioner or the petitioner.

Therefore, the submission of the learned counsel for the petitioner that there was no such allegation stands belied by the above pleading.

Insofar as the second submission is concerned, recounting is permissible only when Election Officer decides the matter and allows recounting. The Election Officer can only decide whether or not there is to be recounting only when an application is made in writing to the Election Officer giving reasons for requesting such recounting. If it appears to the Election Officer that an application for recounting is frivolous and unreasonable, the Election Officer may reject the request for recounting, but in case of acceptance of request for recounting or rejection thereof, the decision of the Election Officer shall have to be in writing and contain reasons therefor. That is the purport of Rule 35 of the Election Rules, which reads as under.

35. Recount of Votes:- (1) After such announcement has been made under sub-rule (7) of Rule 34, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the Election Officer for recounting of the votes either wholly or in part stating the grounds on which, he demands such recount.

(2) On such an application being made the Election Officer shall decide the matter and may allow the application in whole or in part or may reject it wholly if it appears to him to

be frivolous or unreasonable.

(3) Every decision of the Election Officer under sub-rule (2) shall be in writing and contain the reason therefore;

(4) If the Election Officer decides under sub-rule (2) to allow a recount of the votes either wholly or in part, he shall—

a. arrange for the recounting in accordance with Rules 32 and 34;

b. amend the result sheet in Form 17 to the extent necessary after such recount; and

c. announce the amendments so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (4), the Election Officer shall complete and sign the Result Sheet in Form 17 and no application for a further or second recount shall be entertained thereafter.

When election of Sarpanch or any Member under the Act is challenged on the ground that recounting ordered by Election Officer is illegal, the person who sought such recounting is to plead and prove that on his/her behalf the application was made immediately after counting is completed and that such application was considered and that Election Officer passed a reasoned order. In this case, R.W.1 was specifically asked whether Obul Reddy, who is admittedly election agent of the petitioner, has submitted any application under Rule 35 of the Election Rules. The answer was that such application was submitted and it was with the R.W.4. No such application was produced and no order of the Election Officer in writing was exhibited in the O.P. either by petitioner herein or R.W.4. Therefore, the Election Tribunal correctly came to the conclusion that in the absence of any application and order thereon for recounting, R.W.4 could not have ordered recounting. Accordingly, the Tribunal set aside the election of the petitioner and taking into consideration the counting results in the first instance, declared first respondent herein as duly elected Sarpanch.

Indeed, the decision was arrived at by the learned Tribunal correctly relying on binding ratio of the Division Bench Judgment of this Court in **Shaik Khasim Bee v. Principal Magistrate (Election Tribunal)** (supra) wherein their Lords laid down that in the absence of evidence of filing application for recounting, the recounting is illegal.

It is now well settled that in exercise of Certiorari jurisdiction under Article 226 of the Constitution of India, the Court cannot ordinarily interfere with the finding of fact, unless such finding is perverse leading to grave error apparent on the face of the record. After perusing the pleadings in the Election O.P., the evidence through which the Court has been taken through, this Court is convinced that the impugned order does not suffer from any grave error apparent on the face of the record.

The Writ Petition is devoid of merit and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

3.8.2004

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Election Authority-cum-District Collector,
   Prakasam District at Ongole.
2. The Additional Election Authority-MDO,

S. Radha Mohan Rao, Mandal Parishad,

Cheemakurti, Prakasam District.
3. Sri B.Subrahmanyam, MCRDO., Election Officer,

Devarapalem Gram Panchayat, Cheemakurthi, Prakasam District.

4. 2CCs to GP for Panchayat Raj, High Court of A.P., Hyderabad (OUT)

5. 2CD copies.